

**The Oakland Press Co., a wholly-owned subsidiary
of Capital Cities Communications, Inc. and
Deborah Booker. Case 7-CA-17554**

March 12, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND ZIMMERMAN

On September 28, 1981, Administrative Law Judge Herzel H.E. Plaine issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in opposition to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

¹ We agree with the Administrative Law Judge that Respondent did not violate Sec. 8(a)(4) of the Act by discharging employee Booker. However, we do not rely on the Administrative Law Judge's finding that it is questionable whether Booker filed the initial charge with the Board on March 17, 1980, in good faith, or in order to use the Board processes to protect her personal feuding with her supervisor.

DECISION

STATEMENT OF THE CASE

HERZEL H. E. PLAINE, Administrative Law Judge: The issue in this case is whether the Respondent, The Oakland Press Co., a wholly-owned subsidiary of Capital Cities Communications, Inc., a newspaper publisher, discharged Charging Party Deborah Booker, a news photographer, because she filed a charge against Respondent with the National Labor Relations Board (the Board), and by the discharge violated Section 8(a)(4) and (1) of the National Labor Relations Act, as amended (the Act);¹ or whether, as Respondent claims, it lawfully discharged Booker because of her alleged abuse of the sick

¹ Sec. 8(a)(4) of the Act declares it shall be an unfair labor practice for an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act.

leave privilege and her dishonesty in connection with sick leave.

The complaint was issued on April 22, 1980, upon a charge filed by Booker on March 24, 1980, following her discharge by Respondent on March 21, 1980. In the charge of March 24, Booker claimed that the discharge was in retaliation for her filing a prior charge against Respondent with the Board on March 17, 1980, in Case 7-CA-17520. The allegations in the prior charge of March 17 were quite general, stating that since on or about December 1, 1979, Respondent restrained, coerced, and intimidated Booker because of her participation in protected concerted activities, in violation of Section 8(a)(1) of the Act.

Simultaneously with her filing of the second charge of March 24 (underlying the complaint in this case) Booker withdrew her first charge of March 17 in Case 7-CA-17520.

The case at bar, Case 7-CA-17554, was heard before me in Detroit, Michigan, on November 10, 1980. Counsel for the General Counsel and for Respondent have filed briefs.

Upon the entire record, including my observation of the witnesses and consideration of the briefs of the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Michigan corporation with its principal office and place of business in the city of Pontiac, Michigan, where it has been engaged in the business of publishing and printing a daily newspaper of general circulation.

In calendar year 1979, a representative period, Respondent, in the conduct of its publishing operations, had gross revenue in excess of \$1 million; held membership in, or subscribed to, interstate news services, including United Press International and Associated Press; published nationally syndicated features; advertised nationally sold products the revenue from each of which exceeded \$500,000 annually; and purchased and received at its place of business in Michigan newspaper, ink, and other goods valued in excess of \$500,000 which were transported directly to it in interstate commerce from suppliers outside Michigan.

As the parties admit, Respondent is now, and has been at all material times herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. RESPONDENT'S BUSINESS OPERATIONS IN
RELATION TO THE CHARGING PARTY**

Respondent is a daily newspaper with a circulation of about 72,000 subscribers, and a staff of approximately 300 employees, operating in and about Pontiac, Michigan.

Employee Booker was a young woman who worked in the photography department, which was part of the larger editorial department, of the newspaper. She had been a staff photographer for more than a year before

her discharge in March 1980, and before that had been an aide for about a year in the photo and editorial departments. She started with the newspaper in October 1976, working first in the classified ads and circulation departments.

As a staff photographer, Booker's job was to take photos on assignments to supplement news stories, and, on her own initiative, to take photos that stood on their own merit. In March 1980 and earlier her work hours were 8:30 a.m. to 5:30 p.m., Monday through Friday.

Booker was one of a staff of five photographers (four males and herself the only female) plus a chief photographer, Edward Noble, who had been a photographer with the paper for 20 years. Noble was supervisor of the photography department, in turn answerable to Michael Wagner, the editor, with both responsible to the president and publisher, Bruce McIntyre. Noble, Wagner, and McIntyre were admitted supervisors within the meaning of the Act, but only Noble and McIntyre were directly involved in the events that ended with Booker's discharge.

Respondent had established work rules and policies for the editorial department, including the photography department, which had been posted on the general information bulletin board. These had been in existence for a number of years prior to 1980.

In the case of the sick leave policy, it had been in effect and posted since at least March 12, 1974 (Resp. Exh. 3, dated March 12, 1974) when, as the policy stated, Respondent had a union contract with the newspaper Guild;² and the work rules (Resp. Exh. 2) had been in effect even earlier.

Of the work rules (Resp. Exh. 2) rule 4 prohibited an employee's absence without properly notifying his supervisor; and rule 18 prohibited an employee's abuse of sick leave, including the falsification of sickness, failure to report sickness, and failure to provide reasonable documentation or to submit to reasonable examination regarding the nature of any sickness and inability to report to work.

The sick leave policy (Resp. Exh. 3) was more detailed. In relevant part it provided:

When you are ill, will you please remember the following practices, which are old ones but not always honored:

The notification that you are sick must be made to your immediate supervisor. It isn't sufficient to notify whoever answers the phone, or leave messages. If you call and the supervisor is not available, leave a message to the effect that you are unable to report, but call back or have someone call for you as soon as the supervisor can be reached. Otherwise, the supervisor gets a second-hand, usually inadequate message. He doesn't know much about your condition or when you might be coming back. If the supervisor can be reached at home before the start of the work period, notify him there. (The preceding informa-

tion applies equally to those persons who are replacing supervisors on days off, etc.)

You should report, as promptly as conditions permit, when you expect to return for work, and if that is uncertain you should keep in daily touch with the office about it. Otherwise, the scheduling of other staffers becomes very difficult. (If you are [on] long-term sick leave, having an operation, etc., the daily call obviously does not apply, but you should call at regular intervals to describe your progress.)

Any of these steps may be taken by a relative or friend, of course, if you are too ill to do so.

* * * * *

Notification, as described above, must be made before the start of your shift unless there are circumstances which clearly make it impossible to do so.

* * * * *

Sick leave is only for reasons of your personal illness, and may not be used for any other purpose. Family emergency leave is covered elsewhere in the office policies. Falsification of sick leave is a serious offense which may result in disciplinary action up to and including dismissal.

* * * * *

On the first day of each illness, and on such later occasions as necessary, each supervisor or his assistant will make a personal inquiry regarding the condition of the sick employee and his probable return to work. Notes on these inquiries will be forwarded to the managing editor. Cause of illness will be shown.

As Respondent's president, McIntyre, testified, he had helped draft the work rules and the sick leave policy, and, in addition to their posting, had caused copies to be distributed to the editorial employees in 1974 and again in October-November 1979.³ McIntyre further testified that, as the combined rules and policy stated, dishonesty in connection with sick leave was deemed to be a serious offense which could result in dismissal.

Additionally, Supervisor Noble testified to writing a special memo dated March 12, 1980, to the five members of his photography staff, of which Booker was one, reminding them, as the sick leave policy already stated, that it was important if the employee was going to miss work because of illness to inform him (Noble) at home, or if he was unavailable to inform the morning-shift photographer on duty or other available photographer.

² The editorial employees were no longer represented by a union in March 1980, according to Booker's testimony.

³ In this connection, Booker, who joined the photography department in 1978, claimed not to have received or to have seen copies of the work rules and the sick leave policy until the week in which she was discharged (the week of March 17, 1980). Her supervisor, Edward Noble, testified he did not recall giving her copies of such rules and sick leave policy.

Noble posted the memo (Resp. Exh. 4) on March 12 on a special bulletin board maintained for the photographers and asked that each of them sign it. Four of the photographers signed the memo (using first names or nicknames). Booker was absent on March 12 without having complied with the already existing requirement of direct notification to Noble or other photographer. She claimed she did not see the March 12 memo when she came in on March 13, and did not sign it, but may have seen it at a later date. However, photographer Ed Vanderworp, who in Noble's absence was in charge of assignments on March 13, testified that he placed the memo on Booker's assignment book to make sure she would see and get the memo, and further testified that he saw her pick up both the assignment book and the memo on the morning of March 13. I credit Vanderworp over Booker in view of problems with her credibility, noted *infra*.

III. THE DISCHARGE OF EMPLOYEE BOOKER

A. Events Leading to the Discharge

Booker testified that she awakened in the early morning of Monday, March 17, 1980, experiencing sharp pains in her stomach, diarrhea, and nausea, and feeling exhausted and depressed. At 6:15 a.m. she telephoned the newspaper city desk and talked to an assistant to the city editor, Joe Grimm, asking him to relay word to Supervisor Noble of the photography department that she was ill and would not be coming in for work. At that early hour, calling the city desk, as she had done, was the only way to reach the paper or its departments, until the switchboard opened at 8 a.m. Supervisor Noble, in his testimony, acknowledged that he was notified by Grimm sometime after 7 a.m. that Monday morning that Booker would be absent.

According to Booker, she was able to get an appointment with her doctor for 11:45 that morning. Booker lived in a suburban area of Detroit and the doctor, Dr. Anthony Aenlle, lived in another suburban area. Booker got her fiancé (now husband), David Mikonczyk to drive her to the doctor's office, leaving from her house between 10:30 and 11 a.m. Mikonczyk testified that he had his own appointment with another doctor elsewhere, and that he dropped Booker at her doctor's office, went off and kept his appointment, and returned for Booker at Dr. Aenlle's. Judith Wolfe, medical assistant and receptionist for Dr. Aenlle, corroborated, with aid of the doctor's records (G.C. Exh. 3), that Booker saw and was examined and treated by Dr. Aenlle on March 17, and that among other things he prescribed medication to relieve pain.

Booker and Mikonczyk further testified that at or about 1 p.m. he picked her up at her doctor's office, and, because neither had had any food that morning, he drove to a restaurant near her home for lunch and then back to her home, arriving there about 3 p.m. They found a note on the door to Booker from Supervisor Noble.

Supervisor Noble testified that he had arrived at the office at 7 a.m. that morning (March 17), and was informed thereafter by Grimm of the city desk that Booker had called in sick. Since she had not called him at home, or called him later at the office after the first early call

to the city desk (contrary to the directions of the sick leave policy, heading II above), and since he was obliged by the same policy to make an inquiry on the first day of illness as to the employee's condition and probable return to work, Noble telephoned Booker at home, he said, at 7:30, at 8:30, and again at 10:30 a.m., but got no response. He drove to her home about 11:30 a.m., saw her car with her assigned photographic equipment on the seat, knocked on her door but received no response, and put a note on her door to call him as soon as she returned or, if he was not in, to leave a message with one of the photographers.

Booker testified that she had heard no telephone rings at her home that morning before leaving for the doctor. When she and her fiancé, Mikonczyk, saw and read Supervisor Noble's note at or about 3 p.m., Mikonczyk told her, he said, to call Noble at once. She was of a different view, saying she was afraid of being "set up" to be fired;⁴ and they decided to go to the National Labor Relations Board Office in Detroit, where, after about an hour's drive, they arrived about 10 or 15 minutes after 4 p.m.

According to Booker, she met with a Board agent at the Detroit Office (later identified as Charles Morris) for a total of about 5 to 10 minutes, but gave him no written statement at that meeting. She told the Board agent she felt she was being set up to be fired by Respondent, and wanted the Board agent to be a witness by listening in on the telephone call which she was required to make to her supervisor. Board Agent Morris told her there was no telephone in the office in which they were meeting, and that she should use the pay phone down the hall from where they were. She went to the pay phone, and, joined by her fiancé, telephoned Respondent's photographic office. Photographer Rolfe Winter answered, saying that Supervisor Noble was not there. Booker said she had a note from Noble to call, and asked Winter did he know what Noble wanted. Winter replied, "no," and she told him to leave a message that she had called. This was at 4:33 p.m., by fiancé Mikonczyk's watch, said Booker and Mikonczyk.

Booker then returned to the office where she had met with Board Agent Morris and completed what she had to say. She claimed she told him that her supervisor, Noble, had labeled her a "troublemaker" and had taken her to the publisher's office several times, and that, allegedly, on these occasions she had asked for the presence of a person to act as a representative or as a witness for her, but had been denied such. And that was all she told the Board agent, said Booker.

The Board agent wrote out a charge against Respondent which Booker signed and filed. The charge stated, "Since on or about December 1, 1979, the above-named employer has restrained, coerced, and intimidated Deborah Booker because of her participation in protected concerted activities" (G.C. Exh. 5). According to Booker, Board Agent Morris did not explain the lan-

⁴ There was no evidence to indicate any basis for any such alleged scheme against her. From Booker's testimony it did appear that she was feuding with Noble, apparently stemming from her belief that he was discriminating against her as a woman among male photographers.

guage or what it meant, saying only that he thought he should keep the charge general. As the parties stipulated, the charge was time-stamped and filed with the Board at 4:52 p.m. on Monday, March 17, 1980.⁵

Booker testified that she returned to work the next day, Tuesday, March 18, but had no conversation with Supervisor Noble until Wednesday, March 19, when he asked where she had been on Monday, March 17, when he came to her home. She replied, she said, at the doctor's.

Supervisor Noble, who acknowledged awareness of Booker's telephone call to him which had been received about 4:30 p.m. on Monday, March 17, by photographer Rolfe Winter, testified that Booker and he actually talked on Tuesday, March 18, when he asked her the nature of her illness and she, allegedly, replied that it was none of his business and asked him why he had come to her house. Noble replied, he said, that it was his business to find out if she was coming to work or to verify the illness. Booker said nothing about visiting a doctor, according to Noble, but simply said, "I was sick, so what?" I credit Noble.

Supervisor Noble further testified that after a discussion with Publisher McIntyre it was decided that Booker would not be paid for the day of her absence, March 17, and Noble sent her a memorandum to that effect on Thursday, March 20, which she received that afternoon. The memo stated that because Booker was not home on March 17 after calling in sick, because she had not made contact with her supervisor or anyone else in the photo department regarding the absence in accordance with longstanding policy, and because she could not be located on check by the supervisor, she would not be paid for March 17 (G.C. Exh. 6). Booker said she also received a copy of the 1973 policy statement, which she claimed she saw for the first time that Thursday afternoon.

Publisher McIntyre testified that late in the afternoon of Thursday, March 20, he received from the Board a copy of the March 17 charge filed by Booker against Respondent, which copy was time-stamped in at the Board's Office on March 17. McIntyre said he telephoned Supervisor Noble at home that Thursday night to ask if he knew about it. When Noble answered that he did not, McIntyre got in touch with Respondent's lawyer, Zinser, telling him of the charge filed by Booker on the day she had called in sick and asking Zinser to ascertain, if he could, whether it was filed in person by her. Zinser ascertained from the Board that Booker had filed the charge in a visit to the Board's Detroit Office on March 17, and informed McIntyre of it the next day, Friday, March 21.

Publisher McIntyre and Supervisor Noble decided to have Booker repeat the circumstances of her absence from work on March 17. As a result, at noon on Friday, March 21, Noble asked Booker to accompany him to a meeting in the office of the business manager, Mannie Munoz, without telling her the purpose of the meeting.

⁵ It should be noted that following her discharge 4 days later on March 21, employee Booker filed a charge on March 24 (upon which rests the complaint in this case) alleging that she was discharged discriminatorily in retaliation for filing the first charge of March 17. However, simultaneously, she withdrew the first charge of March 17.

She accompanied Noble and asked for representation or a witness on her behalf. She named two news reporters each of whom apparently declined to become involved, but succeeded in getting a third employee she named, intern reporter Peter Madrid.

The meeting proceeded with Business Manager Munoz, Supervisor Noble, and employees Madrid and Booker present. Noble asked Booker to repeat for him her activity on the "sick" day, Monday, March 17. She answered, "I told you I had gone to the doctor." Noble interjected that she had not said so before, to which she replied that she had. Noble then asked her did she go anywhere else, and she answered, "no." Madrid testified the question "was, was that [the doctor's] the only place that she had gone, and her response was, 'yes.'"⁶

The meeting lasted about a minute and a half according to the participants. Booker asked if it had been taped, and Noble declined to answer her, but testified that it had not been taped.

At the end of the day, Booker was served with a notice of immediate discharge (G.C. Exh. 7). The notice said that she had been previously advised she would not be paid for her absence on March 17 because of the suspicious circumstances surrounding her alleged sickness, and that now that Respondent was certain that she had lied she was being discharged immediately for dishonesty and abuse of the sick leave policy.

Publisher McIntyre testified he made the decision directing Supervisor Noble to fire Booker after learning what transpired at the meeting in Munoz' office, which indicated to him that Booker had been guilty of abuse of sick leave and dishonesty. Supervisor Noble further explained that she was not fired for failing to contact him personally regarding her absence, or for failing to call him immediately on finding his note at her home to call him, but was fired for dishonesty in taking a day of sick leave to do personal business. In this connection, Noble pointed out that at the time Booker had over 3 weeks of accrued vacation leave that she could have taken in periods of 1 day, or that she had the privilege of taking a leave of absence without pay for personal business.

B. The Discharge—Not an Unfair Labor Practice

In determining whether Respondent's discharge of Booker was motivated by her filing a charge with the Board or whether it was motivated by her abuse of, or dishonesty in connection with, the sick leave privilege, there are several factors to be considered.

In 1980, Booker was absent four times, including on March 17, and claimed 1 day's sick leave each time. In connection with this kind of absence, Respondent had no practice of requiring the employee to produce a doctor's memorandum, and did not ask her for any.

⁶ In her testimony, Booker failed to acknowledge or deny that there was any such question put or answer given (in either form) other than to imply that no such question was asked. I find that hard to believe in view of the specific purpose for which the meeting was held and the corroborative testimony of disinterested witness Madrid that the question was asked and a clear answer given with respect to the doctor's office being the only place that Booker had visited that day.

Concerning the absence of March 12, just 5 days before the March 17 absence, Booker testified that she had stomach pains and nausea but could not get a doctor's appointment that day; however, she did go to the Michigan Department of Civil Rights in Detroit (an hour's drive from her home) where she filed a charge against Respondent (alleging violations against her as a female under Federal civil rights statutes (Resp. Exh. 1)). Booker testified she was paid for the day since she was on claimed sick leave. She further testified that she never said she stayed home that day. However, she admitted that 12 days later on March 24, when, after her discharge by Respondent, she spent over 7 hours with Board Agent Morris in preparing an affidavit for the Board in the case at bar, she did not tell Agent Morris she had gone to the Michigan Department of Civil Rights on March 12 (because, she said, "he didn't ask"), yet her Board affidavit states she stayed at home on March 12, and does not say she went to other places.

Booker's actions on March 12, and her deviousness and lack of candor concerning these actions, impress me that she was not above abusing the sick leave privilege and concealing it. She did so concerning the absence of March 12, and, while Respondent was not aware of the deception of March 12 when it discharged Booker, I am persuaded that she engaged in the same kind of deception when she absented herself from work for the whole day of March 17.

What is also questionable is whether Booker approached the Board on March 17, in good faith, to obtain use of Board processes to protect or to improve the working conditions of a group of employees allegedly represented by her and was speaking for their benefit and not merely for herself, thereby engaging in protected concerted activities; or whether she was attempting to misuse Board process for personal purposes. The record is devoid of any evidence of the former, and contains intimations that Booker was engaged in personal feuding with Supervisor Noble. Compare *Northeastern Dye Works, Inc.*, 203 NLRB 1222, 1223 (1973).

She had come to the Board, said employee Booker, to obtain a Board agent as a "witness" in a telephone call she was required to make to her supervisor, because, she claimed, she was being set up to be fired. The Board agent avoided becoming embroiled as a witness or participant, and had her sign and file a "general" charge which he did not explain and she did not understand, and which she simultaneously withdrew when she filed a second charge a week later, claiming she was fired for filing the first charge. To treat the first charge as a bona fide filing would appear in the circumstances here to permit Booker to misuse resort to Board processes as a means to avoid ordinary employee obligations to Respondent for her personal purposes when she was not in the course of engaging in protected concerted activities under the Act.

In this view of the situation, I do not regard *Gulf & Western Manufacturing Company, Mackintosh-Hemphill Division*, 232 NLRB 61 (1977), urged by counsel for the General Counsel, as a dispositive precedent for treating as an unfair labor practice an employer's discipline of an

employee who used part of a sick leave day to file a Board charge.⁷

Rather, because Booker was pursuing personal purposes (not protected concerted activities) and misusing the Board or its processes for that end, it seems to me Respondent was not inhibited in applying its discipline for the employee's abuse of the sick leave privilege and deception concerning it. In this regard, the employee was given a second chance to explain to Respondent her absence and activities on March 17, and claimed only that she was ill and went to her doctor and nowhere else. By her own account, at hearing this was over and complete by midday of March 17 when she went on other personal matters and deliberately delayed calling in to her supervisor until the end of the day, though, by general and specific requests, required to call earlier.

However, because (so far as Respondent knew) the dishonesty in connection with the use of the sick leave was a first offense, and because the discipline imposed was discharge, the contention, that the penalty would not have been as severe if the personal business had not been use of some of the "sick" leave time to go to the Labor Board, deserves examination.

As set out under section II above, Respondent's sick leave policy, posted since 1974, has declared that falsification of sick leave is a serious offense which may result in disciplinary action up to and including dismissal. Publisher McIntyre testified that he viewed acts of dishonesty and falsification very seriously and regarded such acts as dischargeable offenses. In looking back over the 10 prior years, McIntyre recalled four cases of discharge for dishonesty.

The first was the case of Mabel Franklin, discharged in 1978 for making unauthorized long-distance telephone calls at company expense. Publisher McIntyre conceded that Franklin was a 3-month employee who had been given a previous warning and was discharged when she repeated the offense.

The second was the case of Phil Laporte, discharged in 1979 for falsification of an advertising invoice, a first offense.⁸

The third was the case of Gary Bainbridge, discharged in 1979 for falsifying a sales call report, a first offense.

The fourth was the case of Ralph O'Neal, discharged in 1972. O'Neal was an editorial employee who had re-

⁷ The Board found in *Gulf & Western* that the employee, in filing a charge with the Board (in reference to an existing union contract and with another employee) during part of a "sick" day, was engaged in protected concerted activity for which the employer unlawfully penalized him, noting that the employer was fully cognizant of the employee's asthmatic and difficult breathing problems which legitimately occasioned sick days when he could not physically perform his duties of working at an open hearth in a steel mill, but was not confined to bed or to home and could take a chauffeured ride to and from the Board Office. It should also be noted that the employee did not deny to his employer that he had gone to the Board Office.

⁸ Counsel for the General Counsel's claim that Laporte's case ended only in a reprimand is not borne out by the record (Resp. Exh. 6). An early June 1979 memorandum to Laporte from a supervisor appears to have attempted to wash out the transaction as not misconduct, and to put the memo in the file as a reprimand, but later June memoranda show that this was not accepted by higher authority and Laporte was discharged. Laporte's simultaneous letter acknowledging misconduct and attempting to resign was not accepted by Respondent, and the discharge was final.

ported being sick and had stayed out 3 weeks without communicating with his supervisors. Publisher McIntyre conceded the possibility that O'Neal may have created the appearance of having abandoned his job, but nevertheless the discharge was made.

While none of these were replicas of Booker's case, they do substantiate the point that Respondent regarded dishonesty as a serious offense, and that it discharged employees for such offenses, including first offenses.

Whether Respondent's conduct be analyzed pursuant to the mode of *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), or of *Limestone Apparel Corp.*, 255 NLRB 722 (1981), and see also *N.L.R.B. v. Charles Batchelder Company Inc.*, 646 F.2d 33 (2d Cir. 1981),⁹ it having been established that Respondent has not tolerated employee dishonesty in the past and has discharged employees found engaging in it including first offenders, I find that Respondent's punishment of Booker, by discharging her for abuse of the sick leave privilege and dishonesty in connection with it, was not invoked as a pretext because she used part of the sick leave to go to the Board, but that the penalty would

have been imposed even if she had engaged in other personal business unrelated to sick leave and had attempted to conceal the fact from Respondent.

The complaint should be dismissed.

CONCLUSIONS OF LAW

1. The General Counsel did not establish that Deborah Booker was discharged by Respondent in violation of Section 8(a)(4) and (1) of the Act.

2. Respondent established that Deborah Booker was lawfully discharged.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁰

The complaint is dismissed.

⁹ Note also the concurring opinion, *id.* at 41.

¹⁰ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.